

was a major filing burden which was unnecessary when applied to non-dominant carriers. <sup>50/</sup> In reaching this determination, the Commission pointed to the substantial cost associated with the development of this information. This burden, when applied to cellular carriers, would be particularly acute and unfair, given the predominantly local nature of cellular service and the relatively limited amount of interstate calling engaged in by cellular customers. Indeed, since most cellular carriers have not been required to operate pursuant to a Uniform System of Accounts, the compilation of information necessary to comply with Section 61.38 of the Rules will be an extremely time-consuming and costly undertaking with no corresponding benefit.

Accordingly, CTIA requests that the Commission initiate a rulemaking proceeding with a view toward adopting rules which

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<sup>50/</sup> As noted by the Commission

[b]ecause the cost of developing this information is relatively great for a non-dominant carrier, the rates paid by ultimate users are likely to be higher than if all competitive carriers were free from this unnecessary regulatory burden. Further, the required submission of these data forces a carrier to reveal to its competitors in advance the fruits of its own analysis and initiative, thereby discouraging the introduction of new innovative service offerings. And, even where a carrier decides to experiment with new service or rate changes, these existing regulations provide a vehicle for competitive harassment and delay by permitting challenges not to the merits of the filing but to the technical details of the accompanying cost support materials.

would relieve cellular carriers (or non-dominant carriers if cellular carriers are classified as non-dominant) of the obligation to submit any data except copies of their rate schedules for interstate services. In this connection, Section 61.38 should be amended to relieve cellular carriers of the obligation to provide the supporting information called for in the rule.<sup>51/</sup>

In addition, the Commission should relieve cellular carriers of the obligation to comply with Section 61.54 of the Rules, which sets forth technical requirements governing the form of tariffs, and perhaps relax the requirements prescribed in Sections 61.52 and 61.53 as well.<sup>52/</sup> The Commission should also adopt a rule which permits cellular carriers to submit "banded rates" which set forth minimum and maximum rate levels. Adoption of such a rule will eliminate the need to file tariff revisions each time a rate is changed in a particular market, thereby easing the burden on both the industry and the Commission.

C. The Commission Should Eliminate the Notice Period For Cellular Tariffs

Section 61.58(b) of the Rules provides that "[t]ariff filings of non-dominant carriers must be made on at least 14

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<sup>51/</sup> Since Section 61.38 already does not apply to non-dominant carriers, no amendment to this rule would be necessary if cellular carriers are declared non-dominant, as requested herein.

<sup>52/</sup> The Commission stated in a Public Notice released January 27, 1993 (FCC 93-51) that it "does not intend to reject tariff filings from carriers affected by the court's order for failure to comply with the technical requirements sections of our rules regarding the form of tariffs, such as Section 61.54" and that it would not "initiate independent enforcement action for such technical rule violations against those carriers." CTIA requests that these policies also be applied to cellular carriers in the interim.

days' notice." <sup>53/</sup> CTIA proposes that this Section be amended in order to eliminate the notice period before cellular carriers' filed rates are permitted to go into effect.

The Commission possesses the legal authority to eliminate notice periods for tariffs. First, there is no statutory language that states to the contrary. Moreover, Congress' establishment of a maximum notice period, without having also prescribed a minimum notice period, further buttresses the argument that the Commission may eliminate the notice period altogether. <sup>54/</sup> Congress has afforded the Commission broad discretion to determine the proper notice period for tariff filings, <sup>55/</sup> and the Commission's favorable experience with permissive detariffing underscores that prior notice serves no worthwhile purpose in competitive services. Accordingly, the notice period can and should be eliminated for cellular tariffs. <sup>56/</sup>

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<sup>53/</sup> Section 61.58(a)(2) provides that the Commission may defer the effective date of a tariff for a maximum total of 120 days.

<sup>54/</sup> The Commission's authority to take such action is consistent with the established principle that complainants do not have a statutory right to suspension or rejection of a tariff. See First Report and Order, *supra*, 85 FCC 2d at 36, citing Associated Press v. FCC, 448 F.2d at 1103, and Trans Alaska Pipeline Rate Cases, 436 U.S. 631, 638 n.17 (1978).

<sup>55/</sup> First Report and Order, 85 FCC 2d at 36-37.

<sup>56/</sup> In the First Report and Order the Commission gave serious consideration to adopting a one-day notice period, but decided that a 14-day period was preferable "as we introduce our new policies." *Id.*, 85 FCC 2d at 37. The Commission indicated that it would reduce the 14-day period "[s]hould it develop that such an extended notice period is not necessary or justified . . . ." *Id.*

The proposed rule change can be accomplished in one of two forms:

- If cellular carriers are designated as non-dominant, the language of Section 61.58 could be modified to read: "Tariff filings of non-dominant carriers are effective immediately upon filing."
- Should the Commission choose not to eliminate the notice period for all non-dominant carriers, or should the Commission decline at this time to designate cellular carriers as non-dominant, a new sentence could be added to Section 61.58(b) which reads as follows: "Tariff filings of cellular carriers are effective immediately upon filing."

D. Cellular Carriers Should Be Permitted To Change Their Tariffs At Any Time

Section 61.59 of the Rules provides that " . . . new rates or regulations must be effective for at least 30 days before any change may be made." Once again, there is no statutory constraint precluding the Commission from eliminating this requirement, and the public interest will be disserved if cellular carriers are prevented from modifying their rates to respond to competitive forces.

The proposed rule change can be accomplished in one of two forms:

- If cellular carriers are classified as non-dominant, a new sentence can be added to the end of Section 61.59 which reads as follows: "Notwithstanding the requirements of this provision, tariff filings of non-dominant carriers may be changed at any time."
- Should the Commission choose not to designate cellular carriers as non-dominant at this time, a new

sentence could be added to Section 61.59 which reads as follows:  
 "Notwithstanding the requirements of this provision, tariff filings of cellular carriers may be changed at any time".

E. Request for Expedited Action

Section 553(b)(A) of the Administrative Procedure Act <sup>57/</sup> exempts interpretative rules and statements of policy from the publication and the 30-day notice and comment requirement. Moreover, even with regard to the promulgation of substantive rules, the proceedings may be expedited for "good cause". <sup>58/</sup> Both the declaratory rulings and rules changes requested herein qualify for expedited treatment under the above test. Cellular carriers have relied upon Commission decisions during their license terms that the filing of tariffs was not required. The uncertainty created for these carriers near the end of their first license terms needs to be resolved as soon as possible. Thus, CTIA requests that the Commission expedite the above-requested rulings.

Respectfully submitted,

CELLULAR TELECOMMUNICATIONS  
 INDUSTRY ASSOCIATION



Michael F. Altschul  
 Vice President and General Counsel  
 Two Lafayette Centre, Suite 300  
 1133 21st Street, N.W.  
 Washington, D.C. 20036  
 (202) 785-0081

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<sup>57/</sup> 5 U.S.C. § 553(b).

<sup>58/</sup> 5 U.S.C. § 553(d)(3).